

subsequent stage, which he may deem fit or proper, accepting the revision petition and quashing the impugned order, direct him to proceed in accordance with the observations made heretofore. This petition is allowed accordingly.

N. K. S.

Before S. S. Kang, J.

SARDARI LAL & CO.,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 3621-M of 1982.

November 29, 1982.

Prevention of Food Adulteration Act (XXXVII of 1964)—Section 16(1)(a)—Prevention of Food Adulteration Rules, 1955—Appendix B Item No. A. 05.21—Garam Massala—Whether falls within the definition of ‘curry powder’ given in Item A. 05.21 in Appendix B—Standard of purity for Garam Masala not prescribed—Seller of such Garam Masala—Whether could be prosecuted under section 16(1)(a).

Held, that ‘curry powder’ has been defined in item No. A. 05.21 in Appendix B of the Prevention of Food Adulteration Rules, 1955. It is apparent from the definition of curry powder that among other things it contains garlic, ginger, turmeric. These articles are not used in the preparation of Garam Masala. Similarly, curry powder may contain starch and edible common salt, but these are not the ingredients of Garam Masala. No body in this part of the country will purchase Garam Masala to which starch or common salt are added because starch is not added to all meat and vegetable preparations, for the preparation of which Garam Masala may be used. The entry has specifically and unambiguously defined curry powder. The rule making authority has not mentioned Garam Masala to be curry powder. No standard of purity has been prescribed for Garam Masala by the Act or the Rules. As such it is clear that Garam Masala is not a variety of curry powder and no standard of purity having been prescribed by the Rules, no prosecution is possible under section 16(1)(a) of the Prevention of Food Adulteration Act.

(Para 8).

Kailash Chand vs. State, 1975 (1) F.A.C. 466.

—DISSENTED FROM:

Sardari Lal & Co. v. The State of Punjab (S. S. Kang, J.)

Petition Under Section 482 of the Criminal Procedure Code praying that the complaint and proceedings against the petitioner pending in the court of Additional Chief Judicial Magistrate, Hoshiarpur may be quashed.

It is further praying that pending the disposal of the petitioner, the proceedings in the trial Court may be stayed.

D. S. Sahni, Advocate and H. S. Sawhney, Advocates for the petitioner.

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G. S. Bains, A.A.G. (Punjab), for the respondent.

JUDGMENT

Sukhdev Singh Kang, J.—

(1) M/s Sardari Lal and Co., EG864 Gobind Garh, Jullundur, which is a partnership concern, has filed this petition under section 482 of the Code of Criminal Procedure for quashing the Criminal complaint *State v. Parminder Singh, son of Shanker Singh, Mini General Store, Opposite Khalsa High School, Rahimpur, Hoshiarpur* and (2) M/s Sardari Lal & Co., EG864 Gobind Garh, Jullundur, under section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act) pending in the Court of the learned Additional Chief Judicial Magistrate, Hoshiarpur.

(2) Briefly stated, the facts of the case are that Dr. Nirranjan Singh, Food Inspector, purchased six packets of Garam Masala from Shri Parminder Singh on 26th August, 1981. He divided these packets into three equal parts and made them into separate parcels. In due course, the sample was sent to the Public Analyst, Punjab and on receipt of a report from him that the sample was adulterated, Dr. Nirranjan Singh filed a complaint in which the petitioner was shown as respondent No. 2. The complaint was registered and by order, dated 21st December, 1981, the learned Magistrate ordered that the accused be summoned for 16th January, 1982. Parminder Singh, accused, appeared in Court on 16th January, 1982. The case was adjourned for the service of the other accused (petitioner) to 24th February, 1982. Similarly, by order, dated 25th May, 1982, summons were issued against the petitioner. It may be mentioned here that no evidence was recorded before summoning the petitioner as an accused. Aggrieved by these orders, the petitioner has filed this petition.

(3) Mr. D. S. Sahni, learned counsel for the petitioner, has argued that (1) Dr. Niranjana Singh was not authorised to institute the prosecution against the accused because there was no sanction to launch the prosecution and the Court could not take cognizance of the offence under section 20 of the Act without there being a proper and valid complaint by a person authorised and entitled in law to institute such a complaint, (2) that no standard of purity for Garam Masala has been prescribed under the Act or the Prevention of Food Adulteration Rules, 1955 (for short 'rules') and therefore, Garam Masala cannot be said to have been adulterated. The Central Government has framed draft rules and they have prescribed the standard of purity for the Garam Masala. However, these rules have not been legally framed yet; and (3) there was no valid complaint filed against the petitioner as there is no mention in the complaint that the petitioner has in any manner violated the provisions of the Act or the Rules. The name or role of the petitioner does not find mention in whole body of the complaint. Only in the heading, the name of the petitioner has been added to indicate that it has been arraigned as an accused. Even in the prayer clause, there is no averment that any action be taken against the petitioner whereas has been specifically mentioned therein that Parminder Singh has committed an offence under the Act and action may be taken against him.

(4) There is no merit in the first contention raised by Mr. Sahni. Dr. Niranjana Singh was appointed as a Food Inspector for the local areas of district Hoshiarpur,—*vide* Government Notification, dated 17th June, 1977. His name appears at Serial No. 2. By the same notification, powers have been conferred on him under section 20 of the Act to institute prosecution(s) against person(s) committing offence(s) under the Act within the limits of Hoshiarpur District. Later on, the State Government issued a notification on 31st August 1979,—*vide* which in exercise of powers conferred by Section 9 of the Act read with rule 8 of the Rules, it appointed 90 Food Inspectors for the whole of the State of Punjab and for all the local areas for which the Civil Surgeons are the local (Health) Authorities. By the same very notification, it was declared that the jurisdiction of all these Food Inspectors was the whole of the State and the name of Dr. Niranjana Singh, appears at Sr. No. 83 and his place of posting is shown as Miani in district Hoshiarpur. This notification was necessitated because previously Food

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Inspectors were appointed for the districts. By virtue of this notification, the Food Inspectors mentioned therein have been appointed for the whole of the State. It has been argued by Mr. Sahni that the notification, dated 31st August, 1979 superseded the notification dated 17th June, 1977. It is not so. As discussed earlier, the 1979 prosecutions for offences under the Act within the jurisdiction of the Food Inspectors described therein. However, the powers conferred on Dr. Niranjana Singh under section 20 of the Act to institute prosecutions for offences under the Act within the jurisdiction of district Hoshiarpur remained intact. So, Dr. Niranjana Singh was fully competent to institute the complaint for the offences under the Act committed within the territorial limits of district Hoshiarpur. Admittedly, the sample from Shri Parminder Singh was taken at a place which falls within Hoshiarpur District.

(5) Mr. Sahni then tried to argue that the Central or State Government or any person authorised in this behalf by either of them, had not given written consent to Dr. Niranjana Singh to institute the prosecution against the petitioner. This argument is wholly devoid of force. Under section 20, a prosecution could be launched by a person authorised in this behalf by the State Government. Dr. Niranjana Singh had been authorised by the Punjab Government to institute prosecutions by 1977 notification. Separate consent of the Central/State Government was not necessary.

(6) I am of the firm view that the prosecution against the petitioner was launched by a competent person who was fully authorised by the Punjab Government to institute this complaint.

(7) The second contention of Mr. Sahni has merit. Admittedly, Dr. Niranjana Singh had purchased 6 packets of Garam Masala from Parminder Singh. It is not the prosecution case that he had purchased curry powder. The prosecution has been launched against the petitioner on the ground that the sample sent to the Public Analyst did not conform to the standards prescribed for curry powder as it contained crude fibre in a greater proportion than 15 per cent prescribed. It is the admitted case that the rules in terms do not prescribe any standard of purity for Garam Masala.

(8) It is argued by Mr. G. S. Bains, learned AAG, appearing for the State of Punjab, that Garam Masala is a variety of curry powder and squarely falls within the definition of curry powder as

given in item No. A.05.21 in Appendix B appended to the rules. Appendix B gives the definition and standard of quality for different articles of food. Item A.05.21 reads as under:—

“Curry powder means the powder obtained from grinding clean, dried and sound spices “belonging to the group of aromatic herbs and seeds such as black pepper, cinnamon, cloves, coriander, cardamom, chillies, cumin seeds, fennugreek, garlic, ginger, mustard, poppy seeds, turmeric, mace, nutmeg, curry leaves, white pepper, saffron, and aniseeds. The material may contain added starch and edible common salt. The proportion of spices used in the preparation of curry powder shall be not less than 85.0 per cent, by weight, The powder shall be free from dirt, mould growth and insect infestation. It shall be free from any added colouring matter and preservatives other than edible common salt. The curry powder shall also conform to the following standards:—

Moisture.—Not more than 14.0 per cent by weight.

Volatile oil.—Not less than 0.25 per cent (v/W) on dry basis.

Non-volatile ether extract.—Not less than 7.5 per cent by weight on dry basis.

Edible common salt.—Not more than 5.0 per cent by weight on dry basis.

Ash insoluble in dilute HCl.—Not more than 2.0 per cent by weight on dry basis.

Crude fibre.—Not more than 15.0 per cent by weight on dry basis.

Lead.—Not more than 10.0 p.p.m. on dry basis.

Whenever edible common salt is added, its percentage by weight shall be declared on the label. Also the names

“of spices contained in the curry powder shall be given on the label in descending order of composition on wt./wt. basis.”

It is apparent from the definition of curry powder given above that among other things it contains garlic, ginger, turmeric. These

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articles are not used in the preparation of Garam Masala. Similarly, curry powder may contain starch and edible common salt, but these are not the ingredients of Garam Masala. No body in this part of the country will purchase Garam Masala to which starch or common salt are added because starch is not added to all meat and vegetable preparations, for the preparation of which Garam Masala may be used. The entry has specifically and unambiguously defined curry powder. The rule making authority has not mentioned Garam Masala to be curry powder. No standard of purity has been prescribed for Garam Masala by the Act or the Rules. It has been so held in *Nagar Swasthya Adhikari, Nagar Palika, Agra v. Bansi Lal* (1), wherein it has been held by Justice Katju of the Allahabad High Court;

“The sample of Garam Masala taken from the shop of the respondent cannot, therefore, be held to be adulterated as no standards of purity has been prescribed for Garam Masala by the Prevention of Food Adulteration Rules.”

No doubt, a contrary view has been taken by Justice R. N. Aggrwal of Delhi High Court in *Kailash Chand v. State* (2), wherein he held that Garam Masala is one of the varieties of curry powder and is covered by item A.05.21 of the Rules.

(9) It seems that all the ingredients of curry powder had not been highlighted before the learned Judge. No argument seems to have been raised as to the effect of curry powder containing garlic, ginger, turmeric, starch and edible common salt.

(10) Another indication that Garam Masala is not curry powder, is provided by the issuance of the draft rules on 1st September, 1981 (Annexure P-3). By amendment, a definition and standard of purity of Garam Masala is sought to be provided. Garam Masala has been defined to mean powder obtained by grinding clean, dried and sound aromatic herbs and spices only. Now, in this definition, chillies, garlic, ginger, mustard and poppy seeds have been specifically excluded. Similarly, it has been specifically provided that Garam Masala shall not contain fruits or vegetables (fresh or dry), starch or common salt. The standards in the two are also different,

(1) 1980(1) F.A.C. 201.

(2) 1975(1) F.A.C. 466.

in curry powder. The volative oil extract is required to be not less than 0.5 per cent, but in the Garam Masala, the minimum standard prescribed is 0.25 per cent. For crude fibre, the outer limit in Garam Masala has been laid down at 10 per cent whereas in curry powder, it is 15 per cent. All these facts indicate that Garam Masala is not a variety of curry powder. These are two entirely different articles of foods used for entirely different purposes. Their constitutes, are also different. No standard of purity was or is even now prescribed for Garam Masala because the draft rules have not been sanctioned so far.

(11) The complaint filed against the petitioner also does not conform to the requirements of law. Complaint has been defined in section 2(d) of the Code of Criminal Procedure in the following words:—

“Complaint” means any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

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Admittedly, it is not mentioned in the complaint that the petitioner has committed an offence. In the body of the complaint, no facts are mentioned which may indicate that the petitioner in any way violated any provision of the Act or the Punjab Rules. Under section 20 of the Act, the Court takes cognizance of an offence, not being an offence under section 14 or 14-A of the Act, on a complaint filed by an authorised person. However, the cognizance can be taken only on the basis of a legal, valid and competent complaint. A document which does not contain, apart from the name, any allegation whatsoever of having committed an offence cannot be termed to be a complaint. It is not mentioned in the complaint that apart from Parminder Singh from whom the sample was taken, anybody else had committed any offence.

Mr. Gurdial Singh the learned A.A.G. argued that in the complaint, it is mentioned that copy of form VI forms part of the enclosures appended to the complaint and as such this form VI became part of the complaint and in that form, it is mentioned that

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Garam Masala had been purchased by Parminder Singh from the petitioner against a bill.

The argument has only to be stated to be rejected. An enclosure does not automatically become part of a complaint. In the body of the complaint, there is no mention about this form VI or the contents thereof. After reading the complaint, one does not get any information that Parminder Singh had purchased the food articles from the petitioner. The complaint does not indicate what is contained in form VI. So simply by appending form VI with the complaint, the prosecution cannot argue that whatever is contained in form VI should be read as part of the complaint.

(14) There being no allegations against the petitioner of having committed any offence under the Act or the Rules, the complaint, copy of which has been appended as Annexure P/1 cannot be taken to be complaint against the petitioner also.

(15) It was then contended that the petitioner has been summoned under section 20-A of the Act. Even if the allegations were not mentioned against the petitioner, the Court itself in exercise of *suo motu* powers, summoned it under section 20-A of the Act. It will be appropriate to read section 20.A at this stage :—

“Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then the Court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) or in section 20 proceed against him as though a prosecution has been instituted against him under section 20”.

It is apparent from a bare reading of section 20.A that when the Court is satisfied on the evidence adduced before it that a manufacturer is also concerned with that offence, then the Court may proceed against him as if the prosecution has been instituted against him under section 20 of the Act. The satisfaction of the Court has to be based upon the evidence adduced before it. In the present case, no evidence was recorded or adduced before the Court. The

Court had only looked up the complaint and issued summons. There is no compliance with the provisions of section 20-A.

(16) For the foregoing reasons, I allow this petition and quash the orders, dated 21st December, 1981 summoning the petitioner, and the proceedings pending against him before the Additional Chief Judicial Magistrate, Hoshiarpur in *State v. Parminder Singh and (2) Sardari Lal & Co., EG 864 Gobind Garh, Jullundur*, initiated on the complaint, dated 19th November, 1981.

N. K. S.

Before S. S. Sodhi, J.

MONOHAR LAL GUPTA,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 5777 of 1975.

November 23, 1982

Constitution of India 1950—Article 311—Punjab Civil Services (Premature Retirement) Rules, 1975—Rule 3—Government employee placed under suspension—Only subsistence allowance paid during such period—Such employee compulsorily retired while still under suspension—Retirement under such circumstances—Whether amounts to punishment—Provisions of Article 311—Whether attracted.

Held, that the question whether the order of compulsory retirement passed against a government servant tantamounts to dismissal or removal from service so as to attract the provisions of Article 311 of the Constitution of India 1950, depends upon the nature and incidents of the action resulting in such order, which the court is clearly competent to examine. It is well settled that in dealing with the matter it is the substance of the order and not its mere form which is the deciding factor. It follows that if removal from service is, in fact, punishment inflicted upon a delinquent employee, it cannot escape or avoid the provisions of Article 311 by seeking to camouflage it under the cloak of an order of compulsory retirement under the relevant service rules. Where an order of compulsory retirement is passed during the subsistence of the order of suspension whereby the government servant was deprived of the full pay and allowances which he would otherwise have been entitled to,